

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER G. VALENCIA,

Plaintiff,

v.

DEBORAH SAN JUAN,

Defendant.

Case No. 1:22-cv-00360-JLT-EPG (PC)

ORDER REQUIRING PLAINTIFF TO FILE
OPPOSITION OR STATEMENT OF NON-
OPPOSITION DEFENDANT'S MOTION
FOR JUDGMENT ON THE PLEADINGS
WITHIN FOURTEEN DAYS (FINAL
EXTENSION)

Christopher Valencia ("Plaintiff") is a state prisoner proceeding *pro se* in this civil rights action filed pursuant to 42 U.S.C. § 1983.

On January 19, 2023, Defendant filed a motion for judgment on the pleadings. (ECF No. 36). Plaintiff was required to file an opposition or a statement of non-opposition to the motion within twenty-one days. Local Rule 230(l). On February 10, 2023, the Court granted Plaintiff's motion for an extension of time, giving him until March 30, 2023, to respond to Defendant's motion. (ECF No. 39). On March 17, 2023, Plaintiff filed a motion for an extension of time to respond to Defendant's motion and to file four additional motions with his opposition. (ECF No. 44). "Plaintiff provide[d] no explanation as to why he need[ed] an extension of time to respond to Defendant's motion for judgment on the pleadings, nor d[id] he explain how filing these four motions with his opposition will assist in resolving the motion." (ECF No. 45, p. 2). Nevertheless, the Court gave Plaintiff "until April 13, 2023, to respond to Defendant's motion for

1 judgment on the pleadings and to file any related motions.” (Id.). Plaintiff’s extended deadline
2 has passed, and Plaintiff has not responded to Defendant’s motion.

3 Local Rule 230(1) provides that the failure “to file an opposition or to file a statement of
4 no opposition may be deemed a waiver of any opposition to the granting of the motion and may
5 result in the imposition of sanctions.” “Failure to follow a district court’s local rules is a proper
6 ground for dismissal.” Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Thus, a Court may
7 dismiss an action for a plaintiff’s failure to oppose a motion to dismiss,¹ where the applicable
8 local rule determines that failure to oppose a motion will be deemed a waiver of opposition. See
9 Ghazali, 46 F.3d 52 (dismissal upheld even where plaintiff contended he did not receive motion
10 to dismiss, where plaintiff had adequate notice, pursuant to Fed. R. Civ. P. 5(b), and time to file
11 opposition); cf. Heinemann v. Satterberg, 731 F.3d 914, 916 (9th Cir. 2013) (holding that a
12 motion for summary judgment cannot be granted based on a failure to file opposition, regardless
13 of any local rule to the contrary).

14 Despite Plaintiff’s failure to file timely file his response in compliance with this Court’s
15 orders and Local Rule 230(1), the Court will give Plaintiff one final fourteen-day extension to file
16 an opposition or statement of non-opposition to Defendant’s motion for judgment on the
17 pleadings. If Plaintiff fails to file his opposition within this period, the Court may deem the
18 failure to oppose the motion as a waiver of any opposition to that motion, and may recommend
19 that the motion be granted on that basis. Alternatively, the Court may recommend that this action
20 be dismissed for failure to prosecute and failure to comply with court orders.

21 Accordingly, IT IS HEREBY ORDERED that:

- 22 1. Within fourteen days from the date of service of this order, Plaintiff shall file an
23 opposition or statement of non-opposition to Defendant’s motion for judgment on
24 the pleadings. **No further extensions of this deadline will be granted.**

25 \\\

26 ¹ “[Federal] Rule [of Civil Procedure] 12(c) is functionally identical to Rule 12(b)(6) and [] the same
27 standard of review applies to motions brought under either rule.” Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys.,
28 Inc., 637 F.3d 1047, 1055 n.4 (9th Cir. 2011) (citation and internal quotation marks omitted).

2. If Plaintiff fails to comply with this order, the Court may deem the failure to oppose the motion for judgment on the pleadings as a waiver of any opposition to that motion, and may recommend that the motion be granted on that basis.

Alternatively, the Court may recommend that this action be dismissed because of Plaintiff's failure to prosecute and failure to comply with court orders.

IT IS SO ORDERED.

Dated: May 4, 2023

/s/ Eric P. Grosz
UNITED STATES MAGISTRATE JUDGE